

ESTTA Tracking number: **ESTTA1167026**

Filing date: **10/20/2021**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

# **Petition for Cancellation**

Notice is hereby given that the following parties has filed a petition to cancel the registration indicated below.

## **Petitioner Information**

Name	R.M.Palmer Co.		
Entity	Corporation	Citizenship	PENNSYLVANIA
Address	77 S. 2ND ST. WEST READING, PA 19611 UNITED STATES		

Name	The Hershey Company		
Entity	Corporation	Citizenship	Delaware
Address	19 EAST CHOCOLATE AVENUE HERSHEY, PA 17033 UNITED STATES		

Attorney information	PAUL G. GAGNE KLEINBARD LLC 1717 ARCH STREET 5TH FLOOR PHILADELPHIA, PA 19103 UNITED STATES Primary Email: pgagne@kleinbard.com 215-568-2000		
Docket Number			

## **Registration Subject to Cancellation**

Registration No.	6453593	Registration date	08/17/2021
Registrant	Frankford Candy, LLC 9300 ASHTON ROAD PHILADELPHIA, PA 19114 UNITED STATES		

## **Goods/Services Subject to Cancellation**

Class 030. First Use: 2019/03/08 First Use In Commerce: 2019/10/08 All goods and services in the class are subject to cancellation, namely: Hot chocolate beverage mix; candy
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## **Grounds for Cancellation**

The mark is merely descriptive	Trademark Act Sections 14(1) and 2(e)(1)
The mark is or has become generic	Trademark Act Section 14(3), or Section 23 if on Supplemental Register

Failure to function as a mark	Trademark Act Sections 14(1) and 1,2 and 45
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Related Proceedings	Cancellation Proceeding 92078052 (Same Mark)
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Attachments	Petition to Cancel BOMB.PDF(385849 bytes )
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Signature	/Paul G. Gagne/
Name	Paul G. Gagne
Date	10/20/2021

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 6,453,593

Filed: November 12, 2020

For the mark: BOMB

Registered on: August 17, 2021

R.M. Palmer Co.,  
and The Hershey Company,

Petitioners,

V.

Frankford Candy, LLC,

Registrant.

[illegible]

Cancellation No: TBD

# PETITION FOR CANCELLATION

Petitioners, R.M. Palmer Co., (“Palmer”), a corporation organized and existing under the laws of Pennsylvania with an address at 77 S. 2nd Street, West Reading, PA, and The Hershey Company (“Hershey”), a corporation organized and existing under the laws of Delaware with an address at 19 East Chocolate Avenue, Hershey, PA (hereinafter, “Petitioners”), believe that they are and will continue to be damaged by continued registration of BOMB as a trademark for “hot chocolate beverage mix; candy” in International Class 30, as shown in U.S. Registration No. 6,453,593 (the “Registered Mark”), and hereby seek the cancellation of the registration for the same, obtained in the name of Frankford Candy, LLC, a limited liability company organized and existing under the laws of Delaware with an address at 9300 Ashton Road Philadelphia, Pennsylvania 19114 (hereinafter, “Registrant”).

The Registered Mark is presently the subject of cancellation proceeding No. 92078052, filed by Coastal Cocktails, Inc.

As grounds for the petition for cancellation, Petitioners, through their counsel, allege that:

### **PETITIONERS' MARKS AND BUSINESS ACTIVITIES**

1. Petitioner Palmer is a national leader in creating innovative food gifts. By combining Petitioner's category knowledge and experience with trend analysis, it supplies leading national retailers with food and beverage products that are unique, innovative, and of exceptional value.

2. Petitioner Palmer is using the following term in commerce in connection with hot chocolate beverage mix: "HOT CHOCOLATE BOMB."

3. Petitioner Hershey is a leading chocolate, confectionery and snack food company and one of the largest North American manufacturers of quality chocolate and confectionary products, including hot cocoa and hot chocolate mixes and chocolate beverage products.

4. Petitioner Hershey intends to use one or more of the following terms in commerce in connection with hot chocolate beverage mix products: "HOT COCOA BOMB."

### **REGISTRANT'S ACTIVITIES**

5. On November 12, 2020, Registrant filed U.S. Application Serial No. 90/315,859 for the claimed mark "BOMB" on a use basis under Section 1(a) of the Lanham Act for "Hot chocolate beverage mix; candy" in Class 30 with a claimed first use date of March 8, 2019 and first use in commerce date of October 8, 2019.

6. Based on TSDR public records, Registrant filed a specimen that showed the following:<sup>1</sup>



**COUNT I: THE TERM “BOMB” IS GENERIC FOR THE REGISTERED PRODUCTS**

7. Petitioners repeat and incorporate by reference as if fully stated herein the allegations in the paragraphs above.

8. The term “BOMB” is widely used for a genus of goods, namely, confections (often of spherical shape, with hot chocolate mix and other ingredients inside) that can be dissolved/mixed in liquid to change the flavor of beverages. The term “BOMB” is similarly used for analogous products in other categories, such as “bath bombs” which are bubble bath or bath salt compounds, often of spherical shape, that can be dissolved in bath water.

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<sup>1</sup> When compared, the specimen filed with the application is not a substantially exact representation of the mark as shown within the drawing submitted with the application. *See*, TMEP § 807.12(a).

9. Many consumers and companies in the beverage and confections industry (including competitors of Registrant within the industry) use and would understand the term “BOMB” to refer to such a type of dissolvable/mixable confection. Representative examples of the thousands of third-party uses of “BOMB” to refer to such dissolvable/mixable confections, both chocolate and otherwise, can be found at the following links:

<https://www.simplisticallyliving.com/cotton-candy-glitter-bombs/>

[https://www.etsy.com/market/the\\_candy\\_bomb](https://www.etsy.com/market/the_candy_bomb)

<https://sugargeekshow.com/recipe/shiny-chocolate-bombs-with-marshmallows/>

<https://www.thekitchn.com/hot-chocolate-bombs-recipe-23123589>

<https://tastesofhomemade.com/hot-chocolate-bombs/>

<https://www.thepioneerwoman.com/food-cooking/g35046616/hot-chocolate-bombs/>

<https://hostthetoast.com/hot-cocoa-bombs/>

<https://www.scrambledchefs.com/hot-cocoa-bombs-recipes/>

<https://www.tasteofhome.com/article/halloween-hot-cocoa-bombs/>

10. Numerous news outlets, such as The New York Times, The Washington Post, Eater and others, refer to such goods using the generic term “BOMB,” making it clear that consumers use and understand this term to name, identify and find dissolvable/mixable confections of the type described above. The following are representative examples of articles using “BOMB” to refer dissolvable/mixable confections:

<https://www.nytimes.com/2020/12/25/style/hot-chocolate-bombs-instagram-tiktok.html>

<https://www.eater.com/22176330/hot-chocolate-bombs-explained>

<https://www.washingtonpost.com/food/2020/12/21/cocoa-bombs/>

<https://www.seattletimes.com/life/food-drink/for-cocoa-with-panache-make-these-hot-chocolate-bombs/>

<https://www.mashed.com/299830/the-untold-truth-of-hot-chocolate-bombs/>

11. Many of the generic uses of the term “BOMB” are specifically for hot chocolate mix, including in reference to some of Petitioners’ products. In addition to some of the websites cited in Paragraph 8, *supra*, see also:

<https://cocoabombs.com/> (purports to be originator of hot chocolate bomb)

<https://iambaker.net/hot-chocolate-bombs/>

<https://www.savoryexperiments.com/hot-chocolate-bombs/>

<https://hungryhappenings.com/how-to-make-hot-chocolate-bombs/>

<https://sugarspunrun.com/hot-chocolate-bombs/>

<https://www.thepioneerwoman.com/food-cooking/g35046616/hot-chocolate-bombs/>

12. “Bomb” for hot cocoa products was used well prior to the date of Registrant’s Applicant or the alleged date of first use:

<https://www.bakepedia.com/hot-chocolate-truffle-bombs-recipe/> (2013)

<https://www.3winksdesign.com/home/archives/12-2014> (claiming to have invented the hot cocoa bomb)

<https://letslassothemoon.com/must-try-cocoa-mint-truffle/> (2013)

<https://www.thelunchboxseason.com/2014/12/15/make-ahead-monday-hot-chocolate-bombs-microwaveable-mitten-warmers/>

13. As of October 13, 2021, a Google search for “chocolate bomb” yields 1,530,000 results.

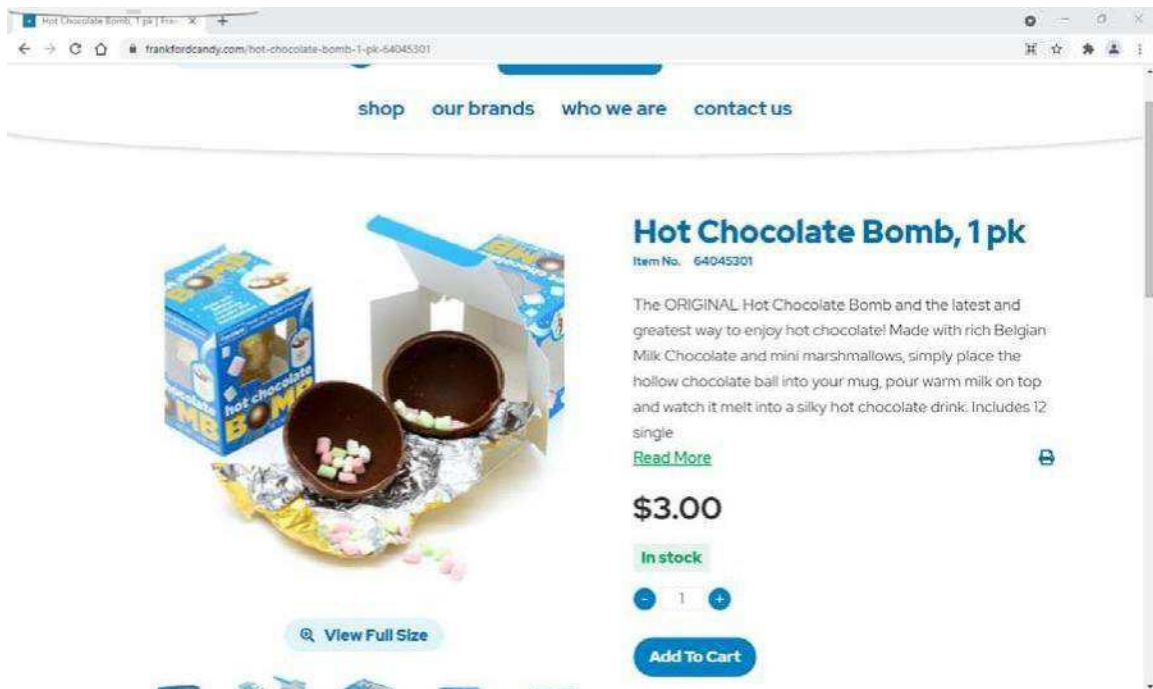
14. As of October 13, 2021, a Google search for “cocoa bomb” yields 1,030,000 results.

15. As of October 13, 2021, a Google search for “hot chocolate bomb” yields 668,000 results.

16. As of October 13, 2021, a Google search for “hot cocoa bomb” yields 165,000 results.

17. The extensive third-party use of “BOMB” (including in the phrases set forth in Paragraphs 13 through 16, *supra*) to refer to a type of dissolvable/mixable confection, both by commercial and non-commercial entities, evidences the term’s generic nature and precludes any claim of exclusivity asserted by Registrant thereto in connection with the registered goods.

18. As further evidence of the generic nature of the term “BOMB,” Registrant itself has on numerous occasions used the term generically. For instance, the specimen of use submitted by Registrant (see Paragraph 8, *supra*) in connection with its application features the phrase “HOT CHOCOLATE BOMB” without any other generic term following the term “BOMB,” expressly conveying that the product is a “BOMB” used to make “HOT CHOCOLATE,” that is, that “BOMB” is the generic term for the product. Similarly, Registrant’s website at [frankfordcandy.com/hotchocolatebomb-1-pk-64045301](http://frankfordcandy.com/hotchocolatebomb-1-pk-64045301) identifies its product as “Hot Chocolate Bomb”:





See also <https://www.frankfordcandy.com/shop/season=holiday/pumpkin-spice-hot-chocolate-bomb-12pk-62226601?returnurl=%2fshop%2fseason%3dholiday%2f> (stating, “Each Hot Chocolate Bomb is 1.6 oz and contains mini marshmallows hidden inside. Best served with hot milk, the Hot Chocolate Bomb melts, creating a delicious cup of hot chocolate.”)

19. Petitioners and others in the beverage and confections industry are and will continue to be damaged by Registrant’s federal registration of the Registered Mark because such registration substantially interferes with Petitioners’ (and other confections providers’) ability to make legitimate use of the generic term BOMB to describe their products.

20. Registrant is not entitled to continued registration for the claimed mark.

**COUNT II: THE TERM “BOMB” IS  
MERELY DESCRIPTIVE OF REGISTRANT’S GOODS**

21. Petitioners repeat and incorporate by reference as if fully stated herein the allegations in the paragraphs above.

22. Even if not generic as set forth above, the Registered Mark is merely descriptive of the goods subject to Registration No. 6,453,593, i.e. hot chocolate beverage mix; candy.

23. The term “BOMB” is widely known and is commonly understood to describe a characteristic or feature of hot chocolate beverage mix and candy -- namely, a product, often spherical in shape, that dissolves when “dropped like bomb” into liquid to create hot chocolate.

24. Numerous consumers and companies in the confections and beverage mix industry (including Registrant’s competitors) have used the term “BOMB” to indicate and/or describe the nature, characteristic or feature of their beverage mixes or confections.

25. Moreover, as demonstrated above, the term “BOMB” also is commonly used to describe various other products that dissolve/mix when placed in liquid. The following are representative examples of third parties using the term “BOMB” to refer to products that are

dissolvable/mixable in liquid, including cocktail bombs, coffee bombs, tea bombs, and bath bombs.

*See, for example:*

Tea Bombs:

<https://www.midgetmomma.com/how-to-make-tea-bombs/>

<https://www.tasteofhome.com/article/tea-bombs/>

<https://www.saltysidedish.com/tea-bombs-recipe/>

Cocktail Bombs:

<https://mydrinkbomb.com/>

[https://www.etsy.com/shop/MyDrinkBomb?utm\\_source=google&utm\\_medium=cpc&utm\\_campaign=Search\\_US\\_DSA\\_GGL\\_Main\\_General\\_New&utm\\_ag=US\\_DSA-General&utm\\_custom1=k\\_Cj0KCQjwqp-](https://www.etsy.com/shop/MyDrinkBomb?utm_source=google&utm_medium=cpc&utm_campaign=Search_US_DSA_GGL_Main_General_New&utm_ag=US_DSA-General&utm_custom1=k_Cj0KCQjwqp-LBhDQARIsAO0a6aJA3KMAXRhSFBS702qXA42TW5BWFxcVdMzblFkj9ciYIRr_v5AJuQaAqJMEALw_wcB_k_&utm_content=go_13830723579_124027385945_544453575745_aud-457997893326:dsa-19959388920_c_&utm_custom2=13830723579&gclid=Cj0KCQjwqp-LBhDQARIsAO0a6aJA3KMAXRhSFBS702qXA42TW5BWFxcVdMzblFkj9ciYIRr_v5AJuQaAqJMEALw_wcB)

[LBhDQARIsAO0a6aJA3KMAXRhSFBS702qXA42TW5BWFxcVdMzblFkj9ciYIRr\\_v5AJuQaAqJMEALw\\_wcB\\_k\\_&utm\\_content=go\\_13830723579\\_124027385945\\_544453575745\\_aud-457997893326:dsa-](https://www.etsy.com/shop/MyDrinkBomb?utm_source=google&utm_medium=cpc&utm_campaign=Search_US_DSA_GGL_Main_General_New&utm_ag=US_DSA-General&utm_custom1=k_Cj0KCQjwqp-LBhDQARIsAO0a6aJA3KMAXRhSFBS702qXA42TW5BWFxcVdMzblFkj9ciYIRr_v5AJuQaAqJMEALw_wcB_k_&utm_content=go_13830723579_124027385945_544453575745_aud-457997893326:dsa-19959388920_c_&utm_custom2=13830723579&gclid=Cj0KCQjwqp-LBhDQARIsAO0a6aJA3KMAXRhSFBS702qXA42TW5BWFxcVdMzblFkj9ciYIRr_v5AJuQaAqJMEALw_wcB)

[19959388920\\_c\\_&utm\\_custom2=13830723579&gclid=Cj0KCQjwqp-](https://www.etsy.com/shop/MyDrinkBomb?utm_source=google&utm_medium=cpc&utm_campaign=Search_US_DSA_GGL_Main_General_New&utm_ag=US_DSA-General&utm_custom1=k_Cj0KCQjwqp-LBhDQARIsAO0a6aJA3KMAXRhSFBS702qXA42TW5BWFxcVdMzblFkj9ciYIRr_v5AJuQaAqJMEALw_wcB)

[LBhDQARIsAO0a6aJA3KMAXRhSFBS702qXA42TW5BWFxcVdMzblFkj9ciYIRr\\_v5AJuQaAqJMEALw\\_wcB](https://www.etsy.com/shop/MyDrinkBomb?utm_source=google&utm_medium=cpc&utm_campaign=Search_US_DSA_GGL_Main_General_New&utm_ag=US_DSA-General&utm_custom1=k_Cj0KCQjwqp-LBhDQARIsAO0a6aJA3KMAXRhSFBS702qXA42TW5BWFxcVdMzblFkj9ciYIRr_v5AJuQaAqJMEALw_wcB)

Coffee Bombs:

[https://athome.starbucks.com/recipe/ao-april21/chocolate-caramel-coffee-](https://athome.starbucks.com/recipe/ao-april21/chocolate-caramel-coffee-bomb?gclid=Cj0KCQjwqp-LBhDQARIsAO0a6aIZ7hREa08pNtYqkum4mD5q_qqLjCprctiMfWvYick9I9INVcPvkPs_aAkccEALw_wcB&gclsrc=aw.ds)

[bomb?gclid=Cj0KCQjwqp-](https://athome.starbucks.com/recipe/ao-april21/chocolate-caramel-coffee-bomb?gclid=Cj0KCQjwqp-LBhDQARIsAO0a6aIZ7hREa08pNtYqkum4mD5q_qqLjCprctiMfWvYick9I9INVcPvkPs_aAkccEALw_wcB&gclsrc=aw.ds)

[LBhDQARIsAO0a6aIZ7hREa08pNtYqkum4mD5q\\_qqLjCprctiMfWvYick9I9INVcPvkPs\\_aAkccEALw\\_wcB&gclsrc=aw.ds](https://athome.starbucks.com/recipe/ao-april21/chocolate-caramel-coffee-bomb?gclid=Cj0KCQjwqp-LBhDQARIsAO0a6aIZ7hREa08pNtYqkum4mD5q_qqLjCprctiMfWvYick9I9INVcPvkPs_aAkccEALw_wcB&gclsrc=aw.ds)

<https://everydayshortcuts.com/coffee-bombs/>

<https://cookathomemom.com/bulletproof-coffee-bombs/>

26. As further evidence of the merely descriptive nature of the term “BOMB,” Registrant itself has on numerous occasions used the term both descriptively and/or generically, as noted in Paragraph 16, *supra*.

27. Notably, on April 8, 2021, the United States Patent and Trademark Office (“USPTO”) issued an Office Action in connection with Trademark Application Serial No. 90279467 for “BOMBOMBS HOT CHOCOLATE BOMBS”, on the grounds that the applied-for mark is confusingly similar to Registration No. 5041699, for “BOMBOM” and Registration No. 5259531, for “BOM BOM”. The Examining Attorney also required Applicant to disclaim the wording “Hot Chocolate Bombs” because it is merely descriptive of Applicant’s goods because the dominant portion of Applicant’s mark “BOMBOMBS” “suggests ‘bombs’, a popular descriptive term for a ball of chocolate containing hot cocoa mix and sometimes other candies for making hot cocoa beverages” (*i.e.*, the same goods covered by the Registered Mark).

28. Similarly, on March 11, 2020, the USPTO issued an Office Action refusing Application Serial No. 88723807 for “COCOA BOMBS” for “chocolate confections”, based on the “COCOA BOMBS” mark being merely descriptive of the applied-for-goods. The Examining Attorney stated that the term “bomb” standing alone is merely descriptive of the applied-for goods. On February 17, 2021, the refusal was made final. Applicant’s argument that its product is not literally a bomb was rejected as unpersuasive, because the term is descriptive in the context of the specific goods.

29. In addition, on April 7, 2020, the USPTO issued an Office Action refusing Application Serial No. 88765157 (filed in January 2020, well prior to Registrant’s Application), for “HOT CHOCOLATE BOMBS” for “hot chocolate mixes”, based on “hot chocolate bombs” being merely descriptive, noting that “both the individual components and the composite result are descriptive of Applicant’s goods.” On October 27, 2020, a supplemental refusal was issued on the

grounds that “HOT CHOCOLATE BOMBS” does not function as a trademark. Application Serial No. 88765157 is presently suspended pending the disposition of the prior-filed Application Serial No. 88723807.

30. In light of all of the foregoing, the Registered Mark is likely to be recognized and understood by the average consumer as merely describing a characteristic or feature of Registrant’s beverage mixes and confections.

31. The descriptive nature of the Registered Mark is exacerbated by Registrant’s use of “hot chocolate” together with “bomb” in its marketing and sales of its products in connection with which the Registered Mark is used.

32. Because the Registered Mark is merely descriptive of a character or feature of Registrant’s of beverage mixes and confections, the term “bomb” is incapable of serving the single source identification function of a trademark.

33. Petitioners and others in the beverage and confections industry are and will continue to be damaged by registration of the Registered Mark because such registration substantially interferes with Petitioner’s (and other confections providers’) ability to make legitimate use of the descriptive term BOMB to describe their products.

34. Registrant is not entitled to continued registration for the Registered Mark.

### **COUNT III: REGISTRANT’S FRAUD**

35. Petitioners repeat and incorporate by reference as if fully stated herein the allegations in the paragraphs above.

36. In connection with its application, Registrant declared, under threat of punishment by fine or imprisonment, or both, under 18 U.S.C. § 1001, that “no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical

form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.”

37. As shown above, at the time Registrant made this declaration, the term “BOMB” was prevalently used within the industry as a generic and/or descriptive term for dissolvable/mixable confections. In light of the information cited above, and upon information and belief, at the time of filing its application to register the term “bomb” as a trademark, Registrant was aware of the descriptive and/or generic nature of the term “bomb” and its inability to claim exclusive rights in the mark.

38. There is substantial evidence that persons or entities other than Registrant used the term “Bomb” to refer to and/or describe products that are intended to be dissolved in liquid to create an edible drink.

39. Most importantly, there were substantial uses of the term “bomb” in connection with dissolvable confectionery drink mixes prior to Registrant’s alleged use, dating back to 2013, See, e.g.,

<https://www.bakepedia.com/hot-chocolate-truffle-bombs-recipe/> [2013]

<https://www.yourcupofcake.com/hot-chocolate-truffles-2/> [2015]

<https://stressbaking.com/peppermint-hot-chocolate-truffle-bombs/> [2017]

40. Upon information and belief, Registrant knew, or should have known, of use of the term “bomb,” to describe or refer to confectionery products and other products intended to be dissolved in liquid, in addition to those already cited, such as:

<https://dabombfizzers.com/products/candy-bomb>

<https://www.ulta.com/p/candy-bath-bomb-xlsImpprod16321215>

<https://www.thesprucecrafts.com/adding-color-to-bath-bombs-516653>

[https://naturalbeautyworkshop.com/my\\_weblog/2021/09/candy-corn-bath-bomb-parfaits.html](https://naturalbeautyworkshop.com/my_weblog/2021/09/candy-corn-bath-bomb-parfaits.html)

41. Upon information and belief, Registrant's statements to the USPTO in its application to register the term "bomb" as a trademark were knowingly and willfully false. Specifically, upon information and belief, Registrant's statutory declaration that it was unaware of any other person's right to use the mark, was knowingly and willfully false and made in a clear attempt to preempt any rights of others to use the mark.

42. Reasonably relying on Registrant's false material statements, the USPTO granted Registration No. 6,453,593.

43. Registrant is not entitled to continued registration for the Registered Mark.

#### **COUNT IV: REGISTRANT'S NON-USE**

44. Petitioners repeat and incorporate by reference as if fully stated herein the allegations in the paragraphs above.

45. Upon information and belief, Registrant has never used the Registered Mark in commerce in connection with any of the goods identified in Registration No. 6,453,593.

46. Upon information and belief, Registrant is not currently selling or transporting any goods identified in Registration No. 6,453,593 under the Registered Mark in commerce.

47. As shown in the specimen submitted in connection with its application, in order to obtain a registration for the term "BOMB", Registrant claimed use and use in commerce based on its use of the phrase "HOT CHOCOLATE BOMB".

48. Upon information and belief, Registrant continues to claim use of the Registered Mark based on its use of the phrase "HOT CHOCOLATE BOMB".

49. However, the phrase "HOT CHOCOLATE BOMB" is materially different from the Registered Mark as depicted within Registration No. 6,453,593, resulting in a different commercial

impression between the respective marks. Moreover, to the extent that the term “BOMB” is part of the phrase “HOT CHOCOLATE BOMB” such use is not a trademark use of the term “BOMB,” but rather a textbook example of a generic use of a term to identify the type of product, namely, a “bomb” to make “hot chocolate.” As such, Registrant has failed to use the term “BOMB” as a mark in commerce.

50. Registrant is not entitled to continued registration for the Registered Mark.

#### **COUNT V: THE TERM “BOMB” FAILS TO FUNCTION AS A MARK**

51. Petitioner repeats and incorporate by reference as if fully stated herein the allegations in the paragraphs above.

52. The Registered Mark fails to function as a trademark, pursuant to 15 U.S.C. §§ 1051 and 1127, as it fails to meet the statutory definition of a trademark or services mark, that is, “any word, name, symbol, or device, or any combination thereof—(1) used by a person [...] to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown [...] to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. ” See 15 U.S.C. §1127 (emphasis added).

53. Registrant fails to show use of the Registered Mark as “a mark shall be deemed to be in use in commerce—(1) on goods when [...] it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto [...] [and] on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce” See 15 U.S.C. §1127.

54. Registrant’s continual use of “hot chocolate” with “bomb” means that consumers will not recognize the Registered Mark as indicating the source of Registrant’s products. To the

contrary, Registrant's use of "bomb" after "hot chocolate" conveys that the product is simply the type of product generically known as a "bomb" for making hot chocolate.

55. Registrant is not entitled to continued registration for the Registered Mark.

56. WHEREFORE, Petitioners respectfully request that this cancellation action be sustained and that Registration No. 6,453,593 for the mark "BOMB" be cancelled.

Respectfully,

/s/ Paul G. Gagne

Paul G. Gagne

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*Attorneys for Petitioner R.M. Palmer Co.,*

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*Attorneys for Petitioner The Hershey Company*

Dated: October 18, 2021



**CERTIFICATE OF SERVICE**

I hereby certify that on October 15, 2021 a true and complete copy of the Petition for Cancellation was served, via email, to attorney of record for Registrant:

Jacqueline M. Lesser  
BAKER & HOSTETLER LLP  
2929 Arch Street  
Cira Centre, 12th Floor  
Philadelphia, Pennsylvania 19104-2891  
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[sshore@bakerlaw.com](mailto:sshore@bakerlaw.com)